

ASH

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Plaintiff,

vs.

Fernando Rivera-Aispuro,
Defendant/Movant.

No. CV 14-0734-PHX-DGC (BSB)
CR 13-0149-PHX-DGC (JFM)

ORDER

Movant Fernando Rivera-Aispuro, who is confined in the Giles W. Dalby Correctional Facility in Post, Texas, has filed a *pro se* “Motion for Early Release Pursuant to Title 18 USC 3624.” The Court will deny the Motion.

This matter has been opened as a motion to vacate sentence under 28 U.S.C. § 2255. However, Movant’s Motion does not refer to § 2255 except to say that his Motion is “not a civil post-conviction relief pleading.” Nor does he refer to any other jurisdictional basis for his Motion. Although the Court may construe a *pro se* motion as a § 2255 motion, it may not do so without first giving certain warnings to the movant. In *Castro v. United States*, 540 U.S. 375, 377 (2003), the Supreme Court held that a district court may not recharacterize a motion as a defendant’s first § 2255 motion without first warning him that the recharacterization will subject subsequent § 2255 motions to the law’s “second or successive” restrictions, and allowing him an opportunity to withdraw or to amend the motion. But even if the Court would provide Movant with the requisite

1 *Castro* warning, it would not recharacterize this matter as a motion brought under § 2255
2 because his claim for relief is frivolous.

3 In his Motion, Movant seeks relief under a bill known as the Federal Bureau of
4 Prisons Nonviolent Offender Relief Act of 2013, H.R. 62, 113th Cong. (2013-2014),
5 which was introduced in Congress to amend 18 U.S.C. § 3624. However, that bill has
6 not yet been enacted into law. Accordingly, Movant's Motion has no arguable basis in
7 fact or in law.

8 **IT IS ORDERED** that Movant's "Motion for Early Release Pursuant to Title 18
9 USC 3624" (Doc. 35 in CR 13-0149-PHX-DGC (JFM)) is **denied** and that the civil
10 action opened in connection with this Motion (CV 14-0734-PHX-DGC (BSB)) is
11 **dismissed**. The Clerk of Court must enter judgment accordingly.

12 Dated this 7th day of May, 2014.

13
14
15 

16 _____
17 David G. Campbell
18 United States District Judge
19
20
21
22
23
24
25
26
27
28